

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOGAN M. CASTRO,
Plaintiff(s),

v.

RUSSELL A. STEWART, et al.,
Defendant(s).

Case No.: 2:19-cv-01856-JAD-NJK

ORDER

The Court granted Plaintiff's application to proceed *in forma pauperis* subject to making a partial payment. Docket No. 3; *see also* Docket No. 5 (receipt of partial payment). The Court now screens Plaintiff's complaint with respect to Defendant Stewart pursuant to 28 U.S.C. § 1915(e).¹

Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

¹ The Court issues a separate order with respect to Defendant Reno Police Department.

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
2 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
3 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
4 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
5 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
6 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
7 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
8 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
9 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
10 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
11 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
12 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
13 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
14 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
15 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
16 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

17 Plaintiff’s complaint asserts a claim against Defendant Stewart for excessive force. A
18 plaintiff states a claim under 42 U.S.C. § 1983 by alleging that a right secured by the United States
19 Constitution or statutory law has been violated, and that the deprivation was committed by a person
20 acting under color of law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Allegations that law
21 enforcement officers used excessive force in arresting a plaintiff may establish a violation of the
22 Fourth Amendment. *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1090 (9th Cir. 2013). Whether
23 force used is constitutionally excessive turns on the objective reasonableness of the force used. *Id.*
24 In this case, Plaintiff alleges that Defendant Stewart attempted to kill him by intentionally hitting
25 him with his sports utility vehicle after Plaintiff had fled on foot. *See* Docket No. 1-1 at 4. Plaintiff
26 alleges that he suffered significant physical injuries from the encounter. *See id.* Construing
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1 Plaintiff's complaint liberally and considering that this case is only at the screening stage, these
 2 allegations are sufficient to plead a § 1983 claim for excessive force.²

3 Accordingly, **IT IS ORDERED** that:

- 4 1. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint (Docket No. 1-1) on
 5 the docket.
- 6 2. The Clerk of the Court shall issue summons to Defendant Stewart, and deliver the same
 7 to the U.S. Marshal for service. The Clerk of the Court shall also deliver a copy of the
 8 complaint to the U.S. Marshal for service.
- 9 3. Plaintiff shall have twenty days in which to furnish the U.S. Marshal with the required
 10 Form USM-285.³ Within twenty days after receiving from the U.S. Marshal a copy of
 11 the Form USM-285, showing whether service has been accomplished, Plaintiff must
 12 file a notice with the court identifying whether defendant was served. If Plaintiff
 13 wishes to have service again attempted on an unserved defendant, a motion must be
 14 filed with the Court identifying the unserved defendant and specifying a more detailed
 15 name and/or address for said defendant, or whether some other manner of service
 16 should be attempted.
- 17 4. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be
 18 accomplished within 90 days from the date this order is entered.
- 19 5. From this point forward, Plaintiff shall serve upon Defendant, or, if appearance has
 20 been entered by counsel, upon the attorney(s), a copy of every pleading, motion, or
 21 other document submitted for consideration by the court. Plaintiff shall include with
 22 the original papers submitted for filing a certificate stating the date that a true and
 23 correct copy of the document was mailed to Defendants or counsel for Defendants. The
 24 Court may disregard any paper received by a District Judge or Magistrate Judge that
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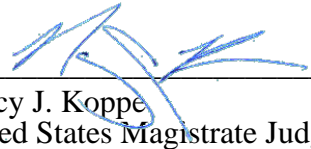
26 ² The Court screens the complaint without the benefit of the adversarial process. *Buchheit*
 27 *v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012). Nothing in this order should be construed as
 28 precluding the filing of a motion to dismiss.

³ The USM-285 form is available at www.usmarshals.gov/process/usm285.pdf.

1 has not been filed with the Clerk, and any paper received by a District Judge, Magistrate
2 Judge, or the Clerk that fails to include a certificate of service.

3 IT IS SO ORDERED.

4 Dated: July 15, 2020

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7 Nancy J. Koppe
8 United States Magistrate Judge
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